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INTERAGENCY AGREEMENT
Lago Espanol, L.L.C.
Lago Espanol Wetland Mitigation Bank

I. INTRODUCTION

Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 authorize the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill material into Waters of the United States and for construction and other work in or affecting Navigable Waters. Decisions to issue or deny permits are based on a public interest review and, for projects subject to the regulation under the Clean Water Act, on compliance with the 404(b)(1) Guidelines developed by the U.S. Environmental Protection Agency.

Corps permit regulations specify that Department of the Army (DA) permits may be conditioned to require mitigation for impacts which are likely to occur and which are of importance to the human or aquatic environment. The Council on Environmental Quality (CEQ) has defined mitigation to include: avoiding impacts, minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts. Consistent with CEQ's definitions, Subpart H of the Clean Water Act 404(b)(1) Guidelines discusses measures which may be used to avoid and minimize impacts to the aquatic ecosystem and to compensate for unavoidable losses of habitat.

Guidance on the type and level of mitigation required by the 404(b)(1) Guidelines is provided in a Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army dated February 6, 1990. The Memorandum states that "Appropriate and practicable compensatory mitigation is required for unavoidable adverse impacts which remain after all appropriate and practicable minimization has been required." It further stipulates that, "...for wetlands, the Corps will strive to achieve a goal of no overall net loss of values and functions."

Compensatory mitigation for wetland impacts is accomplished by restoring, enhancing, creating, and in exceptional circumstances, preserving wetlands similar in nature to those being impacted. Mitigation may be performed on an individual, case-by-case basis in which a permit recipient develops and individually implements a mitigation plan specifically designed to offset impacts associated with his or her project. Alternatively, mitigation for multiple actions may be consolidated into a single wetland mitigation project. Consolidating mitigation usually results in greater overall environmental benefits than implementing numerous scattered, typically small, individual mitigation projects and is usually more cost-effective to set up.



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On November 28, 1995, the Department of the Army, Environmental Protection Agency, Department of the Interior, Department of Commerce and Department of Agriculture issued joint federal guidance on implementation and operation of mitigation banks. The guidance requires that each mitigation bank has an enabling instrument which documents concurrence between all involved parties on the objectives of the bank and the manner in which the mitigation bank is implemented, operated and administered.

II. SCOPE OF THIS AGREEMENT

This agreement will serve as the enabling instrument authorizing Lago Espanol, L.L.C., hereinafter referred to as "Sponsor", to establish the Lago Espanol Wetland Mitigation Bank in all lands owned by Sponsor in portions of Sections 32, 33, and 34, Township 8 South, Range 2 East, and Sections 3, 4, 5, 8, 9, 10, 16, 17, 18, and 19, Township 9 South, Range 2 East, Ascension Parish and portions of Sections 2, 11, 12, and 13, Township 9 South, Range 1 East, Sections 5, 7, 8, 17, 18, and 19, Township 9 South, Range 2 East, and Section 32, Township 8 South, Range 2 E, Iberville Parish, located near the communities of Dutchtown and St. Gabriel, Louisiana. The location of the mitigation area is depicted on the attached vicinity map included as Attachment A.

The Lago Espanol Wetland Mitigation Bank as herein defined will operate within the constraints of the National Environmental Policy Act (42 USC 4321 et seq.), the Clean Water Act (33 USC 1251 et seq.), including the Section 404(b)(1) Guidelines (40 CFR 230), Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Corps of Engineers regulations (33 CFR 320-330), and all other applicable federal and state laws, and rules and regulations. The program complies with the intent of the February 7, 1990, Department of the Army/Environmental Protection Agency (EPA) Memorandum of Agreement concerning mitigation and the November 28, 1995, Federal Guidance For the Establishment, Use and Operation of Mitigation Banks. It is not the intent of this agreement to construe and/or alter the requirements and agency responsibilities as specified in existing law, regulation or policy.

Under this agreement, it will be the responsibility of Sponsor to successfully complete the following tasks:

1. Implement and maintain a forested wetland mitigation bank as specified in this agreement;
2. Execute and enforce a Conservation Servitude on lands contained within the mitigationbank;
3. Maintain current accounting records;
4. Perform monitoring as necessary to document success and/or failure of the mitigationbank;
and

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5. Conduct appropriate remedial action, if warranted.

The following agencies were involved in the development of this agreement and comprise the Mitigation Bank Review Team (MBRT) for the Lago Espanol Wetland Mitigation Bank:

U.S. Army Corps of Engineers, New Orleans District (NOD)
U.S. Fish and Wildlife Service, Lafayette Field Office (FWS)
U.S. Environmental Protection Agency (EPA), Region VI
Louisiana Department of Wildlife and Fisheries (LWF)

Upon implementation of the mitigation bank, the MBRT will be responsible for:

1. Reviewing the sponsor's proposal and assure conditions of this agreement are complied with;
2. Reviewing post-implementation monitoring reports and transaction statements; and
3. Making decisions regarding the need for remedial action and mitigation credit adjustments.

The NOD will serve as chair of the MBRT and is responsible for conducting all meetings with the bank sponsor and agencies unless otherwise agreed to.

As the regulatory agency responsible for administering the Section 10 and Section 404 Permit Program, NOD will continue to make the final decisions regarding issuance of Department of the Army Permits, the type of compensatory mitigation which will be required and the amount of credit needed to compensate for impacts associated with a particular permit action. NOD will fully consider comments and recommendations offered by the federal and state resource agencies when making these decisions.

III. PURPOSE AND OBJECTIVES OF THE MITIGATION BANK

The purpose of the Lago Espanol Wetland Mitigation Bank is to enhance and/or preserve productive bottomland hardwood and cypress-tupelo forested wetland ecosystems on approximately 4,046 acres of land in Ascension and Iberville Parishes as compensation for unavoidable losses of wetland functions and values as authorized by Department of the Army (DA) Section 10 and/or 404 permits. The Lago Espanol Wetland Mitigation Bank may only be used to compensate for impacts which remain after all appropriate and practicable measures have been explored by a permit applicant to avoid and minimize project-related impacts. In addition, only those wetland enhancement and preservation activities performed by Sponsor, without funding assistance from other public (state or federal) programs, may be used as mitigation. If state or federal programs are used offsite of the Mitigation Bank for the benefit of third parties and the programs' activities either directly or indirectly benefit the Mitigation Bank, then the Sponsor will not forfeit credits.

It is the intent of Sponsor to implement the enhancement activities for credits associated with Unit VIII prior to the distribution of any credits. Further, it is the intent of Sponsor to implement the enhancement activities associated with Units III through VII prior to and during the non-growing season beginning in December 1999. Upon approval of this agreement, in accordance with the Louisiana Conservation Servitude Act, a conservation burden will be placed on all lands contained within the mitigation bank. If after ten years from the date of placing a conservation burden on the entire Mitigation Bank there remains acreage that has not been used for the creation of mitigation credits, then the MBRT and Sponsor will review the mitigation project with the possible intent of releasing the unused acreage from the conservation burden. If the sponsor decides to remove acreage from the mitigation bank, then for the sole purpose of ecological benefit and contiguity of conservation lands, the MBRT reserves the right of prioritization of the placement of the conservation burden for any credits sold in conjunction with Units I and II. Through a contractual agreement with individual permit recipients, Sponsor will, for a fee to be paid by permittees, agree to implement any increment of mitigation as specified in DA permits and incur the responsibility for the long-term maintenance, management, protection and overall success of the bottomland hardwood and cypress-tupelo forested wetland enhancement and/or preservation. Sponsor acknowledges that an applicant for a DA permit will not be required to mitigate at the Lago Espanol Wetland Mitigation Bank. Rather, an applicant may, where appropriate and practicable, be given the option of using the Lago Espanol Wetland Mitigation Bank or propose other means or areas that would successfully meet compensatory mitigation requirements.

IV. EXISTING CONDITIONS

The proposed mitigation bank totals approximately 4,051 acres of primarily forested lands located within the Amite River hydrologic unit (U.S.G.S. Cataloging Unit 08070202) and encompasses portions of Bluff Swamp and Spanish Lake. The subject property is owned and managed by Sponsor. Ten Tracts, numbered 11 through 20, ranging in size from 81 acres to 1,411 acres form five separate units. There are three general habitat types present: bottomland hardwood distributary ridges, bottomland hardwood forest, and swamp. The distributary ridges are interspersed throughout the area and will be included in the bottomland hardwood community. The distributary ridges are at the highest elevations with typical bottomland hardwood communities at a slightly lower elevation. The distributary ridge and bottomland hardwood habitat types comprise approximately 1,750.13 acres of the mitigation bank. The peaks of the ridges are typically non-wetlands but represent an important component of the ecosystem. The adjoining bottomland hardwood communities experience seasonal backwater flooding. Dominant woody species composition consists of overcup oak, nuttall oak, willow oak, water oak, green ash, american elm, sugarberry, black willow, honey locust, and bitter pecan. Dominant shrub/sapling species include red maple, boxelder, sugarberry, swamp privet, deciduous holly, and planer tree. Understory species consist primarily of *Smilax*, poison ivy, muscadine, rattan, and palmetto.

Baldcypress/tupelogram swamp found in the mitigation bank comprises approximately 1,751.39 acres. The swamp habitat is found in the lowest areas on the properties and is permanently or

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semi-permanently inundated. Dominant vegetation is baldcypress and tupelogum, with red maple, black willow, sugarberry, bitter pecan, and swamp privet present.

Two subset habitat types also occur on the mitigationbank. These types are black willow swamp and fresh marsh, and are the result of degradation of portions of the bottomland hardwood and swamp habitat types. Approximately 253.56 acres have converted from the historical habitat types to domination by black willow from a lack of regeneration of original species composition due to extended hydroperiods. An additional approximately 242.63 acres have converted to a fresh marsh type system as a result of brine saturation, elevated water levels and increased hydroperiod which has inhibited natural regeneration of woody species.

Of the total acreage included in the mitigationbank, approximately 53.29 acres consist of roadways, open water, or pasture. These areas are not included in calculation of available credits. Maintenance of existing permatized roadways will be allowed.

The ecosystem of the Spanish Lake/Bluff Swamp basin suffers from adverse hydrological conditions: Since the turn of the century, numerous human activities have cumulatively resulted in altering the natural hydrology of the basin such that adverse conditions exist. The St. Gabriel oil and gas field was discovered. Numerous roads to access drill sites were constructed, some without culverts. Of those roads where culverts were installed, the majority of these culverts are only minimally functional or nonfunctional or are insufficient in number or size. Bayous Braud and Paul were excavated to provide improved drainage. The excavated material was placed adjacent to the dredged channels and functions as barriers to sheetflow. A levee was constructed and is maintained on the east side of Bayou Braud and Alligator Bayou and separates Bluff Swamp from the Spanish Lake area eliminating any water exchange between these areas. Water control structures were installed on bayous Alligator and Frog to control drainage from Spanish Lake and Bluff Swamp, respectively. The management of these structures has been primarily for maintenance of a set water level in Spanish Lake for recreational fishing. The overall result is what was once a large flood storage basin with little disruption in water exchange has been compartmentalized and the hydroperiods of the individual compartments vary, as do the water levels. Extended hydroperiods in areas have stressed stands of bottomland hardwoods and hindered regeneration of both hardwoods and baldcypress.

The distributary ridges and bottomland hardwood areas have reached maturity supporting merchantable timber. The swamp acreage also supports a mixture of merchantable timber, pulpwood, and mulch. The lands contained within the mitigation bank have historically been utilized by the property owners for silviculture purposes. Unless the subject acreage is accepted into a wetland mitigation bank, the property owners will accept recent proposals for the timber rights and continue the historical silviculture land use practices. While the area would remain a functioning wetland, these silviculture practices would result in an immediate diminishment of the habitat value of the area.

Primarily, four soil series classified by the Natural Resources Conservation Service (NRCS) are identified as occurring on the subject property. These include Sharkey clay, Sharkey clay,

frequently flooded, Galvez silty clay loam, and Fausse association. All are listed as hydric soils. Additionally, small areas of non-hydric Commerce silt loam or silty clay loam may occur. These small inclusions would be limited to ridges that are interspersed throughout the subject property.

The Sharkey series, which includes Sharkey clay and Sharkey clay, frequently flooded soils, are poorly drained, very slowly permeable. These soils formed on the lower part of natural levees of the alluvial plain in more than three feet of clayey sediments. Runoff and water movement through the soil is slow. The water table is found within one foot of the surface during the winter months. The wetness of the soil causes poor aeration and restricts the growth of plant roots.

Galvez silty clay loam is a poorly drained soil found on the natural levees on the alluvial plain. Runoff and water movement through the soil is slow; the water table is within three feet of the surface in the winter months.

The Fausse association is comprised of Fausse, Sharkey and Barbary soils. These soils are clayey, very poorly drained, and almost continuously flooded. This association is found in the backswamp area of the alluvial plain. Approximately 75 percent of this association is the Fausse soils and represent the intermediate elevation. The Sharkey soils are located at the higher elevations and the Barbary soils are at the lowest elevations.

The Commerce series soils are poorly drained, slowly permeable, and formed in the loamy sediment on the natural levees on the alluvial plain.

V. WETLAND MITIGATION PLAN

A. PRESERVATION

1. Approximately 1,750.13 acres of mature bottomland hardwood forest will be preserved by filing a conservation servitude on the subject property in accordance requirements specified in Section VIII of this agreement. This acreage encompasses all of Tracts 11 and 19, and portions of Tracts 12, 13, 15, 16, 17, 18, and 20. The preservation of this acreage will be referred to as Unit I.

Credits derived from the preservation of bottomland hardwood will be used primarily for projects where the impacted habitat is bottomland hardwood wetlands (in-kind functional replacement) and the impacted area continues to be a functional wetland; that is, project results in habitat diminishment or conversion. The management potential for Unit I has been calculated to be 0.33. Calculation of the credits required to fulfill compensatory mitigation requirements specified in DA permits will utilize this management potential. Unit I credits may be used for full impact projects; that is, projects in which the wetlands area converted to non-wetlands, should NOD determine that this form of compensatory mitigation is appropriate for a given project. In this situation, the calculation of the credits required to

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fulfill compensatory mitigation requirements specified in DA permits will be twice (2x) the amount defined by the management potential to compensate for functions lost at the impacted site other than habitat.

2. Approximately 1,139.39 acres of baldcypress/tupelogum swamp will be preserved by filing a conservation servitude on the subject property in accordance with the requirements specified in Section VIII of this agreement. This acreage encompasses all of Tract 14 and portions of Tracts 13, 15 and 20. The preservation of this acreage will be referred to as Unit II.

Credits derived from the preservation of baldcypress/tupelogum swamp will be used primarily for projects where the impacted habitat is baldcypress/tupelogum swamp (in-kind functional replacement) and the impacted area continues to be a functional wetland; that is, project results in habitat diminishment or conversion. The management potential for Unit II has been calculated to be 0.15. Calculation of the credits required to fulfill compensatory mitigation requirements specified in DA permits will utilize this management potential. Unit II credits may be used for full impact projects; that is, projects in which the wetlands area converted to non-wetlands, should NOD determine that this form of compensatory mitigation is appropriate for a given project. In this situation, the calculation of the credits to be debited will be two (2) times the amount defined by the management potential.

B. ENHANCEMENT

1. Approximately 612.0 acres of baldcypress/tupelogum swamp will be enhanced through alteration of the existing hydrologic conditions. Breaks in the material deposited along the banks along Bayou Braud will be cleared to improve water exchange. Additional breaks along the Bayou's banks will be created, if necessary, to provide the appropriate degree of water exchange necessary to benefit the ecosystem. The breaks will be maintained in an open and functional capacity. The number, location and size of the breaks along the Bayou's banks will be identified in the required DA permit. A conservation servitude will be filed on the subject property in accordance with the requirements specified in Section VIII of this agreement. The enhancement of this acreage will be referred to as Unit III.

Fresh swamp species will be planted in Unit III in conjunction with the hydrologic improvements. As the area presently possesses a mature overstory with the desired species composition, Sponsor will under plant to enhance the regeneration of the area. Planting densities will vary based on edaphic conditions to ensure the initial criteria discussed in Section V.(D)(2). Seedlings will be randomly planted and will be spaced to accommodate any desired seedlings or mature trees. One to two year-old bare root seedling, 24-inches minimum, will be randomly planted and will be spaced to accommodate any desired saplings or mature trees.

The following species list and composition will be used in Unit III depending on the availability of the seedlings.

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BALDCYPRESS/TUPELOGUM SWAMP

Baldcypress (*Taxodium distichum*) - not less than 50 percent of total
Tupelogum (*Nyssa aquatica*) - not to exceed 25 percent of total
Drummond red-maple (*Acer rubrum* var. *drummondii*) - not to exceed 10 percent of total
Buttonbush (*Cephalanthus occidentalis*) - not to exceed 10 percent of total
Overcup oak (*Quercus lyrata*) - not to exceed 5 percent of total
Green ash (*Fraxinus pennsylvanica*) - not to exceed 5 percent of total
Pumpkin ash (*Fraxinus profunda*) - not to exceed 10 percent of total

Credits derived from performance of the enhancement activity described above will be used primarily for projects where the impacted habitat is baldcypress/tupelogum swamp (in-kind functional replacement). The management potential for Unit III has been calculated to be 0.37. Calculation of the credits to be debited will utilize this management potential.

2. Approximately 131.16 acres, comprising portions of Tracts 12 and 18, will be restored to bottomland hardwood forest. These areas have converted to a fresh marsh system from prolonged inundation due to lack of proper maintenance of existing culverts and improper size or number of culverts. The enhancement of this acreage will be referred to as Unit IV. To accomplish the enhancement, the Sponsor will perform the following actions:

- a) Repair or replace existing culverts, and/or install additional culverts to ensure the appropriate degree of water exchange is provided. All culverts will be maintained in an open and functioning capacity.
- b) Prepare, by mechanical or chemical means, controlled burning, or any combination thereof, depending on site conditions, those portions of the area which are to be planted during a given year.
- c) Plant one to two year-old bare root seedlings 18-inches in length which have been properly handled to ensure viability in the prepared tract during the period of December 15 through March 15 (non-growing season). Depending on availability of seedlings, restored bottomland hardwoods shall consist of a combination of species as described below.

BOTTOMLAND HARDWOODS

Hardmast Species (shall comprise not less than 60 percent nor greater than 70 percent of stand, and no one species to comprise greater than 30 percent)

Nuttall oak (*Quercus nuttallii*)
Overcup oak (*Quercus lyrata*)

Willow oak (*Quercus phellos*)
 Water oak (*Quercus nigra*)
 Bitter pecan (*Carya aquatica*)

Softmast Species (shall comprise not less than 30 percent nor greater than 40 percent of stand, and no one species to comprise greater than 20 percent)

Green ash (*Fraxinus pennsylvanica*)
 Common persimmon (*Diospyros virginiana*)
 Drummond Red Maple (*Acer rubrum* var. *drummondii*)
 Sweetgum (*Liquidambar styraciflua*)
 Sugarberry (*Celtis laevigata*)
 American elm (*Ulmus americana*)
 Bald cypress (*Taxodium distichum*)
 Mayhaw (*Crataegus opaca*)
 Water-locust (*Gleditsia aquatica*)

The seedlings will be randomly planted on 12-foot spacings for a total initial stand density of at least 302 trees per acre and planted randomly as dictated by terrain and edaphic conditions to promote biodiversity.

- d) Maintain the site, on an as-needed basis, by use of mechanical or chemical controls or some combination, thereof. Fire lanes may be maintained around the perimeter of the planted tracts until such time that adequate crown closure occurs.
- e) Monitor and manage the site as described in Section IX of this agreement.
- f) File a conservation servitude on the subject property in accordance with the requirements specified in Section VIII of this agreement.

Credits derived from performance of the enhancement activities described above will be used primarily for projects where the impacted habitat is bottomland hardwoods (in-kind functional replacement). The management potential for Unit IV has been calculated to be 0.26. Calculation of the credits to be debited will utilize this management potential.

3. Approximately 30.56 acres, comprising a portion of Tract 18, have converted to a forested system dominated by black willow. Through improvement of the hydrologic conditions, elimination of the black willow component and subsequent planting with bottomland hardwood species, this area will be enhanced. The enhancement of this acreage will be referred to as Unit V. In addition to performing the activities described above in Section V B(2)(a) through Section V B(2)(f), the sponsor will chemically deaden black willow and other undesirable species prior to planting the area. Desirable species remaining following site preparation may be counted in the tree per acre requirements.

Credits derived from performance of the enhancement activities described above will be used primarily for projects where the impacted habitat is bottomland hardwoods (in-kind functional replacement). The management potential for Unit V has been calculated to be 0.24. Calculation of the credits to be debited will utilize this management potential.

4. Approximately 151.0 acres, comprising a portion of Tract 17, have converted to a forested system dominated by black willow. Through improvement of the hydrologic conditions, elimination of the black willow component and subsequent planting with fresh swamp species, this area will be enhanced. The enhancement of this acreage will be referred to as Unit VI. The restoration will employ the activities described above in Section V B(2)(a) through Section V B(2)(f), incorporating the following changes:

Black willow and other undesirable species will be chemically deadened prior to planting the area.

Planting spacing may be altered to accommodate any remaining desirable saplings or mature trees.

Desirable species remaining following site preparation may be counted in the density requirements.

The initial stand density shall not be less than 200 trees per acre and shall conform to the species list identified in Section V B(1).

Credits derived from performance of the enhancement activities described above will be used primarily for projects where the impacted habitat is baldcypress/tupelogum swamp (in-kind functional replacement). The management potential for Unit VI has been calculated to be 0.19. Calculation of the credits to be debited will utilize this management potential.

5. Approximately 72.0 acres, comprising a portion of Tract 13, have converted to a forested system dominated by black willow. Through improvement of the hydrologic conditions, elimination of the black willow component and subsequent planting with fresh swamp species, this area will be enhanced. The enhancement activities will conform to those described above in Section V B(4). Enhancement of this acreage will be referred to as Unit VII.

Credits derived from performance of the enhancement activities described above will be used primarily for projects where the impacted habitat is baldcypress/tupelogum swamp (in-kind functional replacement). The management potential for Unit VII has been calculated to be 0.26. Calculation of the credits to be debited will utilize this management potential.

6. Approximately 111.47 acres, comprising a portion of Tracts 16, have converted to a fresh marsh system from prolonged inundation due to lack of proper maintenance of existing

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culverts and improper size or number of culverts. The enhancement activities will conform to those described above in Section V B(4) with the exception that black willow is not required to be deadened. The enhancement of this acreage will be referred to as Unit VIII.

Credits derived from performance of the enhancement activities described above will be used primarily for projects where the impacted habitat is baldcypress/tupelogum swamp (in-kind functional replacement). The management potential for Unit VIII has been calculated to be 0.27. Calculation of the credits to be debited will utilize this management potential.

C. GENERAL REQUIREMENTS FOR UNITS I - VIII

To ensure the characteristics and diversity indicative of viable native bottomland hardwood or baldcypress/tupelogum wetland communities, the sponsor will control through removal by chemical or mechanical means exotic or noxious plant species (e.g., Chinese tallow). Additionally, insect-damaged, diseased, or storm-felled trees may be removed subject to approval by the MBRT.

D. SUCCESS CRITERIA AND RELEASE OF CREDITS

1. Preservation: Units I and II

Upon filing a document in the real property records of Ascension and Iberville Parishes that establishes a conservation servitude on the property as specified in Section VIII of this agreement, credits will be made available for use to Sponsor. Copies of the document filing, for both Parishes, will be provided to NOD. Establishment of the conservation servitude will ensure preservation of the environmental attributes associated with the subject property.

2. Enhancement:

Units III, IV, V, VI and VII

Credits will be made available for use upon receipt by NOD of a copy of the document filed in the appropriate Parish or Parishes which establishes a mitigation servitude on the subject property as specified in Section VIII of this agreement. The enhancement activities must occur no later than the growing season identified in DA permit special conditions.

In order to be considered fully successful, the enhanced areas must result in viable forested wetlands of the designated habitat type capable of performing functions inherent to wetlands lost as a result of project implementation via Corps permits. The following criteria will be used to gauge the success of the restoration component of the mitigation effort:

Initial Criteria

- a) Culverts and breaks must be maintained in good working order at all times and of sufficient number and size to provide for the appropriate degree of water exchange required to ensure a viable plant community of the designated habitat type.
- b) For a given planting, a minimum of 50 percent (150 seedlings per acre for bottomland hardwood restoration, 100 seedlings per acre for baldcypress/tupelogram swamp) must survive through the end of the first complete growing season (50 percent of the trees planted per acre for Unit III). In bottomland hardwood enhancement areas at least 65 percent of the surviving seedlings must consist of hard mast-producing species. In baldcypress/tupelogram enhancement areas at least 50 percent of the surviving seedlings must be baldcypress. This criterion will apply to initial plantings as well as any subsequent replantings, which may be needed. This criterion does not apply to Unit III.
- c) For a given planting, a minimum of 125 trees per acre for bottomland hardwoods or 50 baldcypress trees per acre for baldcypress/tupelogram swamp must survive through the end of the fourth growing season (i.e., Year 5) following successful attainment of the one year (i.e., Year 1) survivorship criterion described in item (b) above. Trees established through natural recruitment of the same age may be included in this tally. Stand composition must comply with the criterion as described in item (b) above. For Unit III only, after the fourth growing season (i.e. Year 5) the stand must be comprised of not less than 50 baldcypress trees per acre and 25 percent of any planted seedlings must have survived.
- d) By year 5, any enhanced tract should have an established midstory with a least 75 stems per acre. Species composition shall reflect enhancement plan design. If the midstory does not meet the enhancement plan standards as determined by the MBRT, additional plantings and/or additional breaks in the banks of Bayou Braud may be required.

Long-Term Criteria

- a) Planted tracts must respectively exhibit characteristics and diversity indicative of a viable native bottomland hardwood or baldcypress/tupelogram wetland communities which are commensurate with the age of the stand and site conditions.
- b) Timber thinning and/or harvesting may be performed pursuant to an approved timber harvest plan outlined below in Section V (E).
- c) Human activities, which may cause the degradation of wetland habitat within the mitigation bank, shall not occur without expressed written authorization from MBRT and NOD.

Unit III

The following success criteria will also apply for Unit III:

- a) By year 3 following performance of the activities identified in Section V (B)(1), aerial coverage by scrub/shrub species must be a minimum of 40 percent, and herbaceous coverage must exceed 20 percent.
- b) By year 10 following performance of the activities identified in Section V (B)(1), demonstration of successful baldcypress natural regeneration sufficient to ensure the area is capable of sustaining itself in a form similar to that required of the baldcypress/tupelogram restoration areas.

Unit VIII

The success criteria for Unit VIII is the same as that identified for Units III through VII. However, credits will not be made available until successful attainment of the initial criteria (a) and (b) by the end of the second growing season following plantings. Criteria (c) and (d) remain in effect, as well as the long term criteria.

E. TIMBER HARVEST

Timber harvests subject to permitting requirements of the Clean Water Act, if applicable, and approval by the MBRT may be conducted within Lago Espanol Wetland Mitigation Bank for the sole purpose of maintaining and enhancing timber stand and wildlife habitat quality and diversity. Sponsor shall submit a timber harvest plan for a specific site within Lago Espanol Wetland Mitigation Bank. The timber harvest plan will be forwarded to the MBRT for comment. The NOD has forty-five (45) days from the date of receiving the timber harvest plan to inspect, review and approve or deny the plan. If the Sponsor has not received express written consent, denial, or request for revisions from NOD within the forty-five (45) calendar day period required above, then Sponsor can consider the timber harvesting plan approved by the NOD. No work may proceed without the express written consent of NOD. The timber harvest plan should, at a minimum, conform to the following conditions:

- 1) In no case will the entire forested stand in a given tract be clear-cut.
- 2) Stands with trees averaging 6 inches diameter at breast height (dbh), typically measured 4.5 feet from ground level, shall not be thinned below 30 square feet of basal area per acre, and stands averaging 8 inches dbh or more shall not be thinned below 40 square feet of basal area per acre.
- 3) Species composition and/or ratio of hard mast to soft mast-producing species shall

be maintained during all harvest events. Harvested tracts will be replanted, as necessary, with appropriate species.

- 4) Identification of the boundaries of the specific location proposed to be harvested, the method of conducting the harvest, the type of harvest to be conducted, method of restoration, if necessary, and the criteria for defining the harvest.
- 5) Loading and transport of harvested timber within an approved compartment shall be accomplished by using existing roads and log-loading decks not to exceed 1 acre in size.
- 6) Surface contours of any existing unimproved access roads rutted by heavy wheeled or track-type logging equipment shall be restored to pre-existing grade to the maximum extent practicable.
- 7) At least 3 den and/or cavity trees per acre, if available, shall be preserved throughout harvests. Upon their death, other mature trees shall be identified as den trees so that a minimum of three den trees per acre is present at all times.
- 8) Following any timber harvest, Sponsor shall conduct a post-harvest inspection in accordance with Section IX of this agreement to verify compliance with the timber harvest plan.

F. PERMIT REQUIREMENTS

The maintenance or replacement of existing culverts, installation of new culverts, and the creation of breaks, existing or new, along the banks of Bayou Braud are activities regulated under Section 404 of the Clean Water Act. Prior to performing these activities, Sponsor must obtain the appropriate Department of the Army permit(s) and any other Federal, state or local approvals as may be required. NOD will process DA permit requests for the enhancement activities as expeditiously as is practicable. It appears that the enhancement activities may qualify for authorization by nationwide permit number 27.

VI. MANAGEMENT OR MITIGATION POTENTIAL OF PRESERVATION AND ENHANCEMENT ACTIVITIES

Because of the difficulty involved in quantitatively measuring the entire array of functions a wetland may perform, habitat quality was used as the basis for determining the amount of wetland mitigation credit which would be produced by bottomland hardwood or baldcypress/tupelogum swamp enhancement and preservation efforts at the Lago Español Wetland Mitigation Bank. The habitat assessment models for bottomland hardwoods and swamp were developed by the State of Louisiana, Department of Natural Resources to complement the Wetland Value Assessment Models developed by the Environmental Work Group for evaluation

of projects considered for construction pursuant to the Coastal Wetlands Planning, Protection, and Restoration Act. The habitat assessment models are based on the U.S. Fish and Wildlife Service's Habitat Evaluation Procedure (HEP). Habitat quality of the mitigation bank was measured using the January 10, 1994, Habitat Assessment Models for bottomland hardwoods or swamps, whichever was appropriate.

Within the areas to be enhanced mitigation credit will be given for the net increases in value (i.e., habitat quality) attributable to the mitigation features described in Section V of this agreement. In order to calculate this increase in value, it was necessary to determine the habitat value which the bottomland hardwood wetlands and baldcypress/tupelogram swamps in the mitigation area would provide over a specified period of time (assessment period) if the mitigation features were not implemented (Future Without Project or FWOP). An assessment period of 50 years was used for the purpose of calculating the bottomland hardwood and baldcypress/tupelogram swamp wetland value at the Lago Espanol Wetland Mitigation Bank. The FWOP value was then subtracted from the value which would be provided if the mitigation features are implemented (Future With Project or FWP). The per acre net increase in value, averaged over the 50 year assessment period, is equivalent to the management or mitigation potential of the mitigation effort. The management potential will be used to determine the number of mitigation credits to be deducted from the account balance to compensate for the adverse impacts to wetlands associated with a given permit action. The 50-year assessment period is for calculation purposes only and is not the limit of operation and maintenance liability created by the utilization of this agreement, which is liability in perpetuity.

Lands within the preservation portions of mitigation area currently consist of primarily mature bottomland hardwood forests and baldcypress/tupelogram swamps and are considered to have a high value as wetland and wildlife habitat. Without implementation of the mitigation features, the property is subject to silviculture activities. Subtracting the average annualized FWOP value from the FWP value and dividing the difference by the total acreage of the specific mitigation project equates to the management or mitigation potential of the eight identified mitigation areas within Lago Espanol Wetland Mitigation Bank.

A copy of the completed assessments for each of the eight (8) distinct mitigation efforts is included as Attachment B.

The projected management or mitigation potential for the Lago Espanol Wetland Mitigation Bank will remain in effect unless changed by the MBRT due to failure to achieve success criteria or due to activities which affect the quantity or quality of wetland habitat within the mitigation bank as specified in Section IX.

VII. PROCEDURES FOR USING THE MITIGATION BANK

Utilization of the Lago Espanol Wetland Mitigation Bank to compensate for impacts associated with a DA permit must be approved by NOD on a case-by-case basis. Costs associated with performing mitigation and fees charged to permit recipients for use credits accrued at the Lago

Espanol Wetland Mitigation Bank will be determined by Sponsor.

During the review of any application for an individual DA permit, NOD will require that all appropriate and practicable steps be taken to avoid and/or minimize potential impacts to wetlands. After all such measures have been incorporated into the project; NOD will investigate the availability and suitability of mitigation measures, which may be necessary to compensate for unavoidable wetland impacts. Should NOD, after consulting with other interested resource and regulatory agencies as necessary, determine that use of this area is appropriate and preferable to onsite mitigation and other offsite mitigation, the applicant will be given the option of fulfilling his compensatory mitigation requirements by contracting with Sponsor to perform the mitigation on his behalf at the Lago Espanol Wetland Mitigation Bank. NOD will advise the applicant of this option and inform him of the number of credits from a specific mitigation area necessary to fully mitigate his project. NOD will calculate the credits required to compensate for the remaining unavoidable wetland impacts of the applicant's project as follows:

1. The impact of the applicant's project will be determined using the January 10, 1994, bottomland hardwood or swamp Habitat Assessment Model, whichever is appropriate. Other assessment methodologies may be substituted as necessary. (For projects resulting in wetland impacts of 1 acre or less, NOD may elect to apply best professional judgement with a minimum 1:1 replacement ratio).
2. The impact of the applicant's project, expressed as net loss of Average Annualized Habitat Units (AAHUs), will be divided by the management or mitigation potential of the mitigation area in effect at the time the impact is proposed. The result will represent the minimum amount of compensatory mitigation required.

If the applicant agrees to fulfill his compensatory mitigation requirements by contracting with Sponsor, NOD will condition the DA permit accordingly. The permit conditions will specify the number of the mitigation area and number of credits to be deducted. The permit conditions will require the applicant to provide NOD with a copy of the contractual agreement with Sponsor.

Upon receipt of a NOD approved request from a permittee to perform mitigation, Sponsor will verify that sufficient credits are available in the specified area. Sponsor will then execute a contract with the permittee which specifies that Sponsor will perform the mitigation required in the Corps permit and will incur the responsibility for the long-term management, maintenance, monitoring and protection of the mitigation wetlands.

Sponsor shall place funds collected from permittees during the course of each year in a federally-insured account and shall utilize these funds to perform the enhancement activities that year. Prior to accepting funds for credits associated with enhancement activities, Sponsor shall establish a financial mechanism, as described in Section X of this agreement, to ensure that sufficient funds are available to perform the agreed-upon mitigation on that tract, to perform corrective actions as needed to meet applicable success criteria and to cover the costs of long-term maintenance and monitoring of the tract. If, for any reason, the accrued funds are insufficient to

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perform the mitigation activities specified in the contracts executed during that year, Sponsor shall make up for the shortfall to ensure that the appropriate mitigation activity has been completed.

Sponsor may perform enhancement activities in excess of that needed to satisfy contractual obligations for a given year and apply associated credits to future mitigation requests. All such over activities must be documented in a report to NOD, as specified in Section XI. Under no circumstances may Sponsor commit to credits which are not available, nor shall Sponsor mitigate to credits which have been previously debited as mitigation for other projects.

To the extent appropriate and practicable, the Lago Espanol Wetland Mitigation Bank will be used to compensate for unavoidable wetland impacts occurring primarily within U.S.G.S. hydrologic cataloging unit 08070202, and secondarily within U.S.G.S. hydrologic subregion 0807. However, NOD may, if determined appropriate, allow the area to be used to compensate for impacts occurring outside the recognized area.

The Lago Espanol Wetland Mitigation Bank will typically be used for in-kind replacement of forested wetlands and their functions and values. NOD may, however, allow the use of Lago Espanol Wetland Mitigation Bank credits to compensate for impacts to dissimilar wetland types on a case-by-case basis after coordinating with the appropriate resource agencies. Decisions regarding such "out-of-kind" mitigation will consider the availability and practicability of in-kind mitigation and the relative importance of the impacted wetlands as well as wetlands within the mitigation area.

VIII. LONG-TERM MAINTENANCE AND PROTECTION

Sponsor, or assigns or purchasers, shall be responsible for maintaining and protecting lands contained within the mitigation area boundaries in perpetuity, unless the mitigation area lands are transferred to a state or Federal resource agency or non-profit conservation organization. Perpetual protection and appropriate management and maintenance shall be specified in a document prepared in accordance with the Louisiana Conservation Servitude Act (R.S. 9:1271 et seq.) and filed in the real property records of Ascension and Iberville Parishes that establishes a conservation servitude on the property prior to performing mitigation at the Lago Espanol Wetland Mitigation Bank. The conservation servitude shall warrant clear title and is to run with and be a burden on the land in perpetuity for Sponsor, or assigns, and all subsequent purchasers of the land. The conservation servitude shall stipulate that Sponsor has entered into an agreement with the U.S. Army Corps of Engineers for the establishment of the mitigation bank and that Sponsor has accepted the provisions specified in this agreement. The conservation servitude shall further specify that lands within the mitigation bank are to be managed and maintained for the express purpose of performing wetland functions and, as such, cannot be altered in a manner contrary to this purpose without prior approval from the Corps. In keeping with this requirement, the covenant shall specify restricted use of the property as follows:

- a) There shall be no placing, filling, storing, or dumping on the property of refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other such items.

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- b) There shall be no future commercial, industrial, agricultural or residential uses of the property with the exception of oil and gas resource exploration and extraction activities approved by DA permit(s).
- c) There shall be no mechanized land clearing or deposition of soil, shell, rock or other fill on the property without written authorization from the Corps of Engineers.
- d) There shall be no cutting, removal or destruction of vegetation on the property except in accordance with control of competitive grasses/shrubs required for site preparation and/or in accordance with the timber management plan as specified in this agreement and appropriate DA permits.
- e) There shall be no grazing of cattle or other livestock on the property.
- f) All other activities, which are inconsistent with the establishment, maintenance and protection of wetlands and the associated habitat values within the mitigation bank and which are not subject to Corps of Engineers regulatory authority, are prohibited.

A copy of the conservation servitude shall be provided to NOD for review and approval prior to filing in the real property records of Ascension and Iberville Parishes. After filing, a copy of the recorded conservation servitude, clearly showing the book, page and date of filing, will be provided to NOD. For each year in which credits are debited from the Lago Espanol Wetland Mitigation Bank, Sponsor shall provide to NOD a plat indicating the location and size of the tract associated with the credits.

The conservation servitude and restrictions therein shall not prevent the continuation of pre-existing uses of the property that do not conflict with the establishment and maintenance of the mitigation bank. The conservation servitude shall allow certain future uses of the property, including hunting, fishing, trapping, non-consumptive recreational pursuits and timber harvesting conducted pursuant to an approved timber harvest plan as identified in Section V (E) of this agreement. The conservation servitude shall run with the land and shall be binding on and all future owners or users of the property but shall be subject to modification through mutual consent by Sponsor, the grantor of the servitude and the Corps.

Waters of the United States including all wetlands situated within the mitigation bank would be subject to all applicable requirements established under the CWA. As such, DA permits will be required for the deposition of dredged or fill material, including mechanized land clearing, in these areas. All requests for permits within the mitigation bank will be coordinated with the MBRT; however, decisions regarding the issuance of such permits will be made by NOD in accordance with applicable permit regulations and guidance and in consideration of impacts to any portion or all of the Lago Espanol Wetland Mitigation Bank. In making its decision, NOD will consider the fact that wetlands within the Lago Espanol Wetland Mitigation Bank have been enhanced and/or preserved to mitigate other wetland impacts. Timber harvesting activities which result in the

deposition of dredged or fill material may require a DA permit. Timber harvests shall be conducted in accordance with an approved timber harvest plan as specified in Section V(E) of this agreement.

If a decision is made to authorize activities in any portion of the Lago Espanol Wetland Mitigation Bank, and such activities affect the quantity or quality of wetlands or functioning of the bank, the permit recipient will be required to compensate for the loss of wetland value associated with his project. The amount of compensation required will be based upon the acreage of wetlands impacted and the ultimate anticipated value of the impacted wetlands. Impacts to wetlands within the Lago Espanol Wetland Mitigation Bank shall be mitigated by debiting the appropriate credits from the mitigation area, if sufficient credits are available. In cases where sufficient credits are not available, the permittee will be responsible for fulfilling all or part of his compensatory mitigation requirement elsewhere, as approved by NOD.

Should the MBRT determine that an activity or activities authorized within the Lago Espanol Wetland Mitigation Bank would likely affect the management or mitigation potential of the mitigation bank, the MBRT shall coordinate with Sponsor and recalculate the management potential using the appropriate assessment methodology. The recalculated management potential will not affect credits which have already been debited but will be used to determine the appropriate credits necessary for future activities using the mitigation bank as compensatory mitigation.

IX. MONITORING, REPORTING AND CORRECTIVE ACTIONS

Sponsor shall, upon written request, allow any member of the MBRT access to the mitigation area for the purpose of inspecting the condition of the area. Sponsor shall perform annual monitoring of the mitigation bank to verify that success criteria described in Section V have been met and to validate compliance with the terms of the mitigation servitude and this agreement. Non-scheduled monitoring reports shall be provided to NOD and made available to other members of the MBRT upon written request. In the event monitoring reveals that initial success criteria have not been met, Sponsor shall take measures to achieve the mandatory success criteria the following year. Monitoring, reporting and remedial action shall be conducted in accordance with the following procedures:

1. Sponsor shall conduct a survey of living and dead seedlings in each planted tract at or near the end of the first growing season following initial planting. Tracts of 3 acres or less shall be surveyed in accordance with an accepted academic or industrial sampling methodology. Seedling survival on tracts greater than 3 acres shall be documented by performing a comprehensive tally or by counting seedlings in rows or sample plots selected at random from within the tract. The number and orientation of rows or plots used in the sample will vary, depending on the size and configuration of the tract, but must be representative of the tract and must account for at least 5 percent of the total number of seedlings planted in that tract. In addition, Sponsor shall perform a cursory examination of the entire planted tract to determine if overall survival is adequate.

2. Sponsor shall, within 60 days following the initial survival survey, provide a written report to NOD indicating the number and species of living seedlings. The report shall also describe the condition of applicable drainage structures, the overall condition of the seedlings, and identify likely causes for observed mortality within those tracts which did not exhibit the appropriate seedling survival rate.
3. If survival criteria is not met as determined by sampling or by observing high mortality in any zone or location within a planted tract, Sponsor shall take appropriate actions, as recommended by the MBRT, to address the causes of mortality and shall replace all dead and/or missing seedlings with new in-kind plantings during the following non-growing season during which appropriate seedlings are available. Replanting, in accordance with this paragraph, and monitoring and reporting, as described in items 1 and 2 above, shall occur annually as needed to achieve and document the required survival rate.
4. If the survival criterion is not met after three unsuccessful attempts, NOD will convene a meeting of the MBRT and Sponsor to decide if replanting should continue. Should the MBRT determine that achieving the required survival rate would not be likely, Sponsor shall be required to provide replacement mitigation for the increment of value which did not accrue within the unsuccessful tracts. Replacement mitigation shall be implemented within one year following the decision to abandon replanting efforts. In addition, the MBRT will reassess the mitigation area to determine if a change in the mitigation or management potential is warranted or if use of the mitigation area should be discontinued. If warranted, a new mitigation or management potential shall be calculated using an appropriate assessment methodology to be determined by the MBRT.
5. Sponsor shall continue annual monitoring and reporting of each planting effort, in accordance with the plan described in item 1 above, to verify attainment of the survival criteria in the fourth growing season following successful attainment of Year 1 survivorship and composition criteria. Sponsor shall implement appropriate remedial action to ensure attainment of Year 5 survivorship and composition criteria.
6. Upon attainment of Year 5 criteria in all planted tracts comprising the mitigation area, Sponsor shall randomly establish eight (8), one-tenth-acre permanent continuous forest monitoring plots within in each of the bottomland hardwood enhancement areas and cypress-tupelo enhancement areas. Each plot center shall be identified by a permanent marker, and all trees falling within the monitoring plot shall be permanently tagged and numbered. Sponsor shall, by March 31 of the following year, provide a report to NOD indicating the locations of the plots and documenting the number, species, height and diameters of tagged trees within each plot. The report shall also discuss the general health of the planted trees, describe the vegetative communities (overstory, midstory and understory) developing within and the overall condition of each Unit of the entire mitigation bank. Upon receipt of this report by NOD and confirmation that the mitigation bank is progressing as anticipated, Sponsor may cease annual monitoring and begin monitoring the continuous forest monitoring plots and submitting

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monitoring reports to NOD at 5 year intervals for 50 years after initiation of criteria for release of credits within a specific Unit of the mitigation bank.

7. Sponsor shall, on an annual basis, provide the results of inspections to be performed every four (4) months of all drainage structures, and a description and map showing the location of any remedial action required. The annual report and inspections will be performed for fifty (50) years after initiation of criteria for release of credits within a specific Unit of the mitigation bank. The Sponsor shall, prior to performing the enhancement activities required and on an annual basis following performance of those activities, provide information documenting the species composition and percentage of coverage of the various vegetative zones (i.e., overstory, mid-story or scrub/shrub, and herbaceous) in Unit III. Upon attainment of success criterion (a) for Unit III, annual monitoring may cease. At year 10 following performance of the enhancement activities, a report documenting the presence (or lack thereof) and extent of natural regeneration of baldcypress in Unit III shall be provided to NOD. Failure to achieve criterion (b) may require remedial actions to be performed, at the sole expense of the sponsor.
8. In addition to the monitoring requirements specified above, Sponsor shall conduct a post-harvest inspection of all tracts from which timber was harvested. During the inspection, Sponsor shall record the area in which harvests occurred, the approximate basal area of standing timber by species (if applicable) and the number and species of seedlings which were replanted. Post-harvest inspection reports shall be submitted to NOD by December 31 of the year in which the harvest was completed.

The management or mitigation potential may be adjusted by the MBRT at any time should an Act of God or human-induced activity adversely affect the value or functioning of the mitigation area. Any adjustments to the management or mitigation potential will, except as noted below, apply only to future plantings within the bank and will not affect those tracts which have already been planted.

In the event Sponsor fails to comply with this mitigation area agreement or the mitigation servitude, Sponsor will be required to immediately perform corrective actions, such as replanting and repair or replacement of culverts. NOD will temporarily suspend use of the mitigation bank pending the return of the area to conditions as specified in this agreement and mitigation servitude. NOD will then convene a meeting with Sponsor and the MBRT to determine if a reassessment of the management or mitigation potential is necessary. If remedial action is not taken within one year, the MBRT will cease recognition of the Lago Espanol Wetland Mitigation Bank, and Sponsor will be required to implement mitigation, as approved by NOD, to replace all mitigation which had been performed at the mitigation bank.

X. FINANCIAL ASSURANCES

Sponsor shall establish a financial mechanism for the Lago Espanol Wetland Mitigation Bank to ensure that sufficient funds are available to perform forested wetland restoration and necessary

hydrologic improvements on contracted mitigation acreage as stipulated in this agreement, to perform subsequent corrective actions which may be needed to meet applicable success criteria (e.g., replanting seedlings, repairing hydrological controls such as culverts, breaks in banks along Bayou Braud) and to monitor and maintain the mitigation bank. Such financial assurances may be in the form of a surety bond, Irrevocable Letter of Credit, or escrow account. If a surety bond is used, the bond shall normally be written by a surety company which is on the most recent U.S. Department of the Treasury Financial Management list of approved bonding companies as published in the Federal Register. If an Irrevocable Letter of Credit or an escrow account is used, the letter or account must be provided by a federally-insured depositor that is "well-capitalized" or "adequately-capitalized" as defined in Section 38 of the Federal Deposit Insurance Act. The dollar amount of financial assurance needed shall be determined based upon the sponsor's projected cost to implement, manage, and maintain the required mitigation; however, the final amount must be approved by NOD. The financial assurance must guarantee performance as identified in this agreement or must guarantee payment of funds to an agency or non-profit conservation entity approved by NOD in the event Sponsor is unable or unwilling to fulfill the obligations as specified in this agreement. Financial assurances will be released on an incremental basis approved by the MBRT.

XI. ACCOUNTING PROCEDURES

Sponsor will be responsible for keeping a current ledger of all transactions at the Lago Espanol Wetland Mitigation Bank. The ledger shall document the following:

- 1) Name and permit number for each permit recipient who has contracted with Sponsor for mitigation;
- 2) Date contract was executed;
- 3) Credits to be deducted from the specific mitigation bank and current balance;
- 4) Detailed description of the location and type of any mitigation activity performed, and;
- 5) Map showing the approximate boundaries of the debited credits.

Sponsor shall normally submit this information to NOD by March 31 of each year following the initial debiting but shall provide information on any or all transactions to NOD at any time, upon written request.

XII. ADDENDUMS TO THE MITIGATION BANK

This agreement may be amended to extend mitigation credits for additional enhancement associated with hydrologic improvement activities to areas where the sole basis of mitigation credit is currently preservation on the Lago Espanol Wetland Mitigation Bank as agreed upon by

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the MBRT and Sponsor. Specifically, additional credits for Unit II may be generated through basin-wide hydrologic improvements. Management of any structures associated with the hydrologic restoration activities will be subject to the policies set forth in the addendum. A separate assessment will be conducted to determine the incremental benefit to be derived from the hydrologic restoration activity and the number of credits to be made available to Sponsor. Each addendum will immediately become part of this agreement and will be supplied to cosignatories to this agreement.

Subject to approval by the MBRT, Sponsor will be allowed the latitude to comply with new techniques, guidance, and practices. At any time, Sponsor may request minor changes/alterations be made to the overall and/or specific items of the plan. Any requested change accepted by the MBRT will become part of this agreement and be supplied to co-signatories to this agreement.

XIII. VALIDITY OF THIS AGREEMENT

This agreement is subject to written modification as mutually agreed to by the MBRT and Sponsor for such reasons as significant policy or regulation changes. No recourse will be taken against any individuals who have contracted with Sponsor prior to such modifications, nor against said parties in the event the agreement is terminated. Nothing in this agreement shall be construed as altering responsibilities or empowering new authorities of the signatory agencies.

If circumstances warrant, such as misapplication, improper management or non-compliance with the terms of this agreement by Sponsor, NOD and other members may void their recognition of the Lago Espanol Wetland Mitigation Bank as well as terminate their participation in this agreement. As waters of the United States, any subsequent discharges in the area would require Section 404 authorization and the protective servitude placed on lands which have already been designated for use as mitigation shall remain in place.

XIV. TRANSFER OF AREA OPERATION

Operation of the Lago Espanol Wetland Mitigation Bank may be transferred to a private conservation entity or State or Federal resource agency upon approval by the MBRT. Approval of transfer by the MBRT may not be unreasonably withheld. If operation of the area is transferred to a private conservation entity, title to all of the mitigation bank, remaining management and administration in the area will be transferred to the new area operator, subject to a perpetual covenant that guarantees operation of the area as described in this agreement. The mitigation bank lands, if transferred to a State or Federal resource agency, may become a part of the overall management of a larger area, such as a wildlife management area, and the covenants on the mitigation lands may be changed accordingly provided such changes meet with the approval of the MBRT. Upon transfer to the new operator, that operator will become the Sponsor who will fully assume all responsibilities and liabilities placed upon the Sponsor by this mitigation agreement.

Signed:

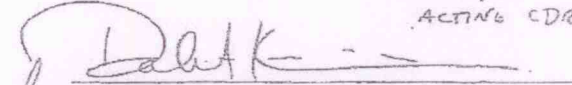
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Bruce M Monroe
BRUCE M. MONROE
LAGO ESPANOL, L.L.C.
MITIGATION BANK SPONSOR

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LTC, EN
Acting CDR


WILLIAM L. CONNER

COLONEL, EN
COMMANDING

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for *S. D. Hamilton*
SAM D. HAMILTON, REGIONAL DIRECTOR
U.S. FISH AND WILDLIFE SERVICE

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William B. Hathaway

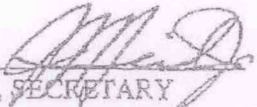
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WILLIAM B. HATHAWAY, DIRECTOR
WATER QUALITY PROTECTION DIVISION
ENVIRONMENTAL PROTECTION AGENCY, REGION VI

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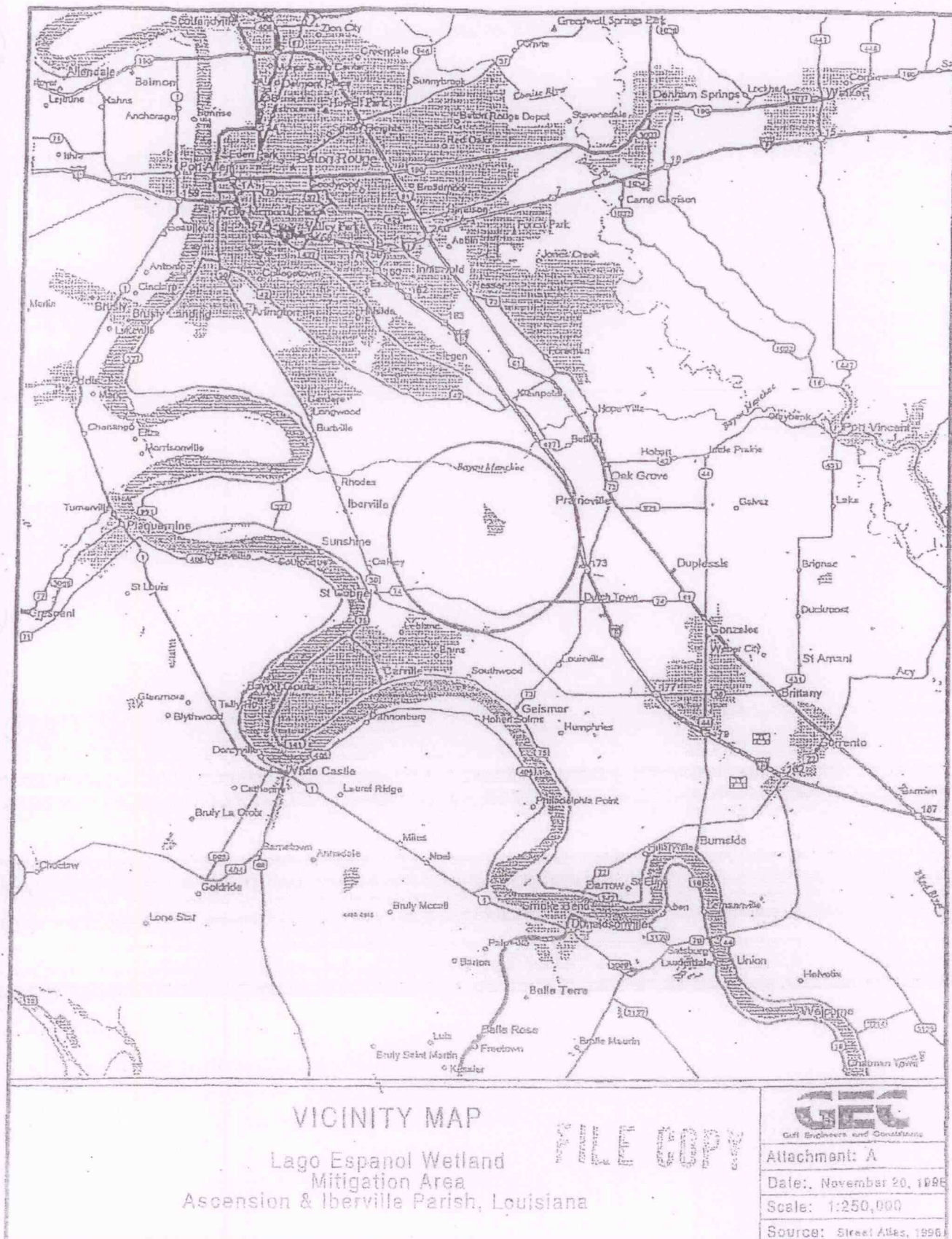
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INTERAGENCY AGREEMENT FOR LAGO ESPANOL LLC - LAGO ESPANOL WETLAND MITIGATION BANK



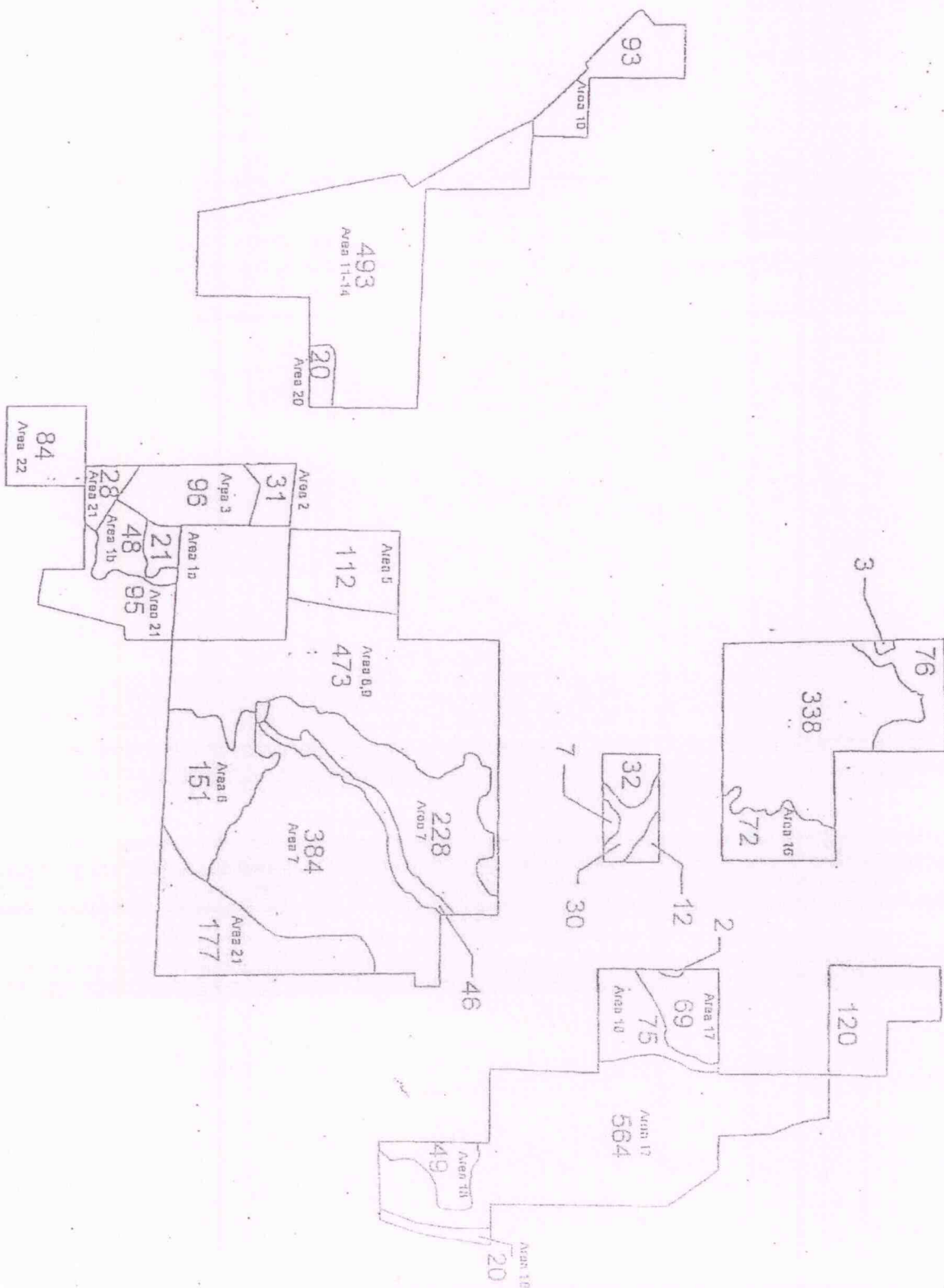
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LOUISIANA DEPARTMENT OF WILDLIFE
AND FISHERIES

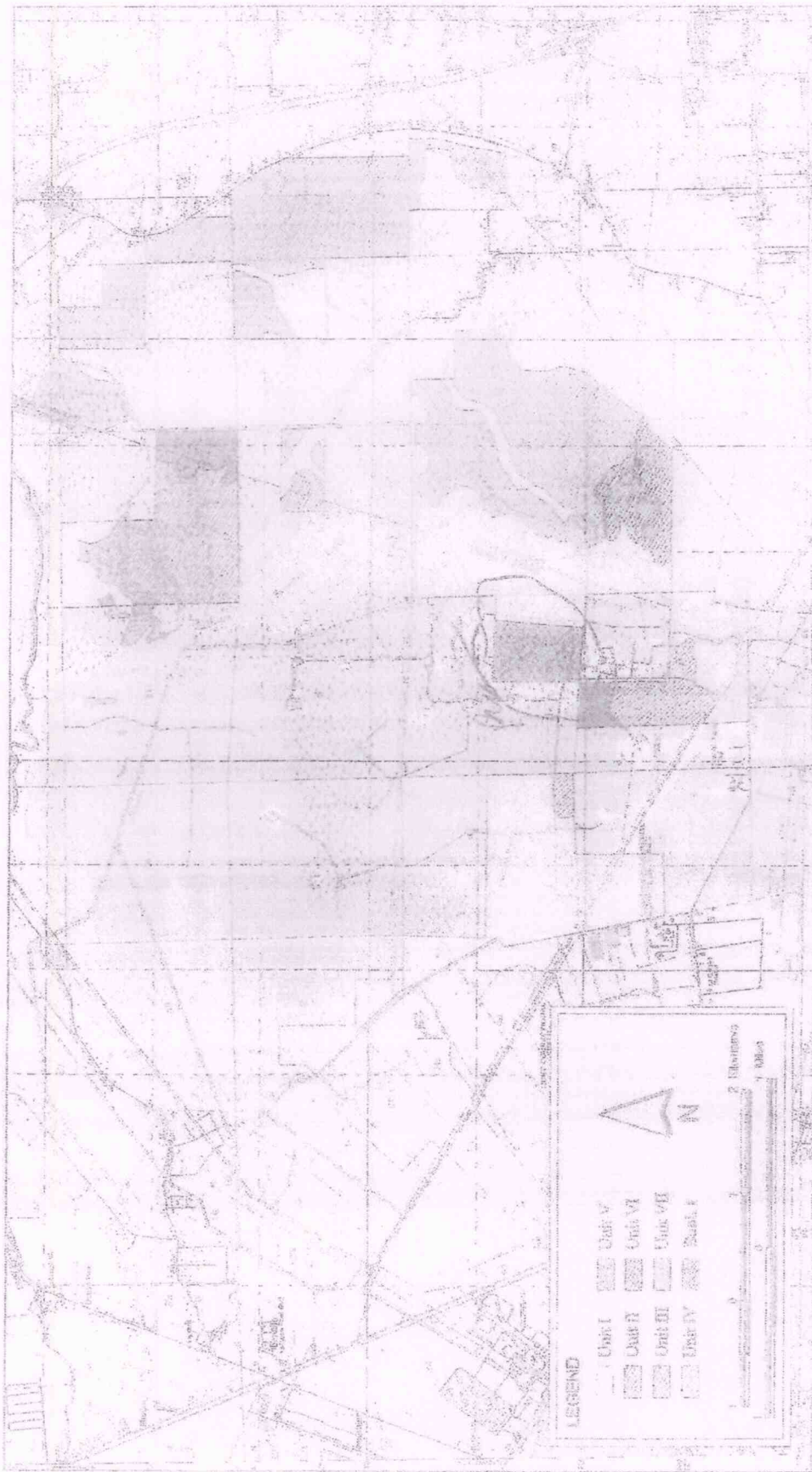
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XOM-Spanish Lake
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Lago Espanol Mitigation Bank

Exhibit 1
 Date: February 11, 1991
 Source: USFWS, 1991

DEPOSITION
 EXHIBIT
 1141
 PERIOD 890-891-0000